IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 393 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MARUTI CHEMICALS - Petitioner(s)
Versus
GUJARAT STATE FINANCIAL CORPORATION & ANR. - Respondent(s)

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Appearance :
Shri D.N. Vakil for M/s. H. L. Patel Advocates for Petitioner(s).
Shri H.S. Munshaw for Respondent(s) : 1.
Shri Amrish Pandya for Shri D. R. Bhatt for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/04/2007

ORAL JUDGMENT

By way of this petition, the petitioners seek to challenge the action of respondent No.1 in auctioning the property and handing over

of the possession of the said property to respondent No.2.

2. The short facts necessary for disposal of the present petition are that in the year 1991, the plot in dispute situate at Naroda was allotted to the petitioners by the Gujarat Industrial Development Corporation. Thereafter, the petitioners applied for a loan and an amount of Rs.18 Lakhs was sanctioned by respondent No.1-Gujarat State Financial Corporation in favour of the petitioners subject to mortgage of the properties. Somewhere in May-1996, the petitioners' unit was closed probably because of certain orders passed by this Court in relation to control of the pollution. From 1992 to August-1996, the petitioner did not repay the loan amount nor paid any interest accrued upon the principal amount. In August-1996, the respondent No.1-Gujarat State Financial Corporation issued a notice to the petitioners to clear of the dues on or before 15th November, 1996. On 18th October, 1996, the petitioners paid a sum of Rs.80,000/- against the outstanding, which was more than Rs.27 Lakhs by that time. On 6th November, 1996, the respondent No.1-Corporation issued a public notice inviting tenders for the auction of the subject plot. On 21st November, 1996, that is, the day before the date fixed for auction, the petitioners approached with the Corporation and tendered a cheque in the sum of Rs.3 Lakhs, but, the respondent No.1 refused to accept the said cheque. On the very same day, the petitioners, trying to seek some political influence, wrote letters to the concerned Minister. It is the case of the petitioners that the concerned Minister issued certain directions to the Officers of the Corporation to accept the cheque and not to proceed with the auction. On 22nd November, 1996, the auction was held and the property was sold for a sum of Rs.18 Lakhs though, according to the petitioners, the market value of the property on the date of the auction could be more than Rs.60 Lakhs. The petitioners submit that on the date of the auction,

the auction purchaser paid a sum of Rs.6 Lakhs only though the sale price was Rs.18 Lakhs. Thereafter, on 1st December, 1996, the petitioners submitted a cheque in the sum of Rs.3 Lakhs with respondent No.1-Corporation, which was accepted by the Corporation, and the petitioners were told that if they pay rest of the amount, then, they would be allowed to restart their business.

On 2nd December, 1996, according to the petitioners, the possession of the plot in dispute was handed over to the auction purchaser. The petitioners, thereafter, made various applications and representations to the authorities, but, as all fell on the deaf ears, they have come to this Court.

3. Shri Vakil, learned Counsel for the petitioners, after taking me through the submissions made in the Writ Application and the documents annexed with it, submits that appropriate notice was not given to the petitioners, auction proceedings were not properly followed and the property was sold in most unreasonable, unjust and unfair manner, a fraud has been committed in connivance with the auction purchaser, the respondent No.2 did not follow the directions issued by the Apex Court in the matter of ***Mahesh Chandra vs. Regional Manager, U. P. Financial Corporation*** [***AIR 1993 SC 935***] and the petitioners were not given reasonable opportunity to clear the outstanding.

4. Shri Munshaw, learned Counsel for respondent No.1, submits that from the petitioners' submissions, it would clearly appear that for a period of four years, they did not pay anything and suffered almost about 54% interest on the principal amount. He submits that appropriate notices were given to the petitioners and they were provided

opportunities more than one to clear of the dues and it would also appear that despite serious actions taken by the Corporation, some of the cheques submitted by the petitioners bounced and notices under Section 138 of the Negotiable Instruments Act, 1881 were also issued and despite that the petitioners did not clear of the dues. His submission is that the Corporation tried its best to recover the money through ordinary measures, but, as the petitioners were bent upon not clearing the dues, the Corporation was left with no other option but to auction the property.

5. Shri Pandya, learned Counsel for the auction-purchaser, submits that he has paid money and received the possession and in any case, he did not commit any fraud and the allegations of connivance are simply paper allegations because no material has been provided in this Writ Application.

6. From the counter affidavit filed by the Gujarat State Financial Corporation, it would clearly appear that the petitioners, on the earlier occasions, had issued cheques in the sums of Rs.50,000/-, Rs.1,50,000/-, Rs.20,000/- and Rs.2,00,000/- in the months of February, March and April-1996. All the cheques bounced and thereafter, notices under Section 138 of the Negotiable Instruments Act, 1881 were issued. It is undisputed before me that despite notice, the amounts under the cheques were not paid. From paragraph-6 of the counter affidavit, it would appear that respondent No.1 requested the petitioners to clear of the sum of Rs.7,98,765/-, failing which actions under Section 29 of the State Financial Corporations Act, 1951 would be taken. Despite that the petitioners did not do anything. Thereafter, a notice under Section 29 was issued on 7th September, 1996; the present petitioners even after receipt of the notice did not reply. Persuaded by the circumstances and

the conduct of the petitioners, the respondent No.1 took over the possession of the property on 18th October, 1996. The Tender Committee met on 22nd November, 1996 and the bidder, who had offered the highest, was also present in the meeting. Ultimately, the offer was raised from Rs. 7 Lakhs to Rs.18.30 Lakhs. Even thereafter, the petitioners did not do anything.

7. From the records, it would clearly appear that the petitioners had proper notice of the auction, they were given appropriate opportunity, they were repeatedly asked to clear of the dues and that proper procedure for holding the auction was observed. From the records, it does not appear that any fraud was committed by the Gujarat State Financial Corporation in connivance with or to help the auction purchaser.

8. After going through the complete records, I am unable to hold that the petitioners are entitled to any relief. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

[R.S.Garg, J.]

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